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7 **UNITED STATES BANKRUPTCY COURT**

8 **DISTRICT OF NEVADA**

9 In re: Case No. BK-S-06-10725-LBR

10 USA Commercial Mortgage Company,

11 Debtor.

12 Chapter 11

13 **Motion For Final Decree and To Close**
 Estate

14 **Date: February 4, 2014**

15 **Time: 9:30 a.m.**

16 **Estimated Time for Hearing: 10 minutes**

17 The USACM Liquidating Trust (“USACM Trust”) by and through its counsel
 18 undersigned, pursuant to 11 U.S.C. § 350 and Rule 3022, *Federal Rules of Bankruptcy*
Procedure, moves this Court to enter a final decree and to close this case and pending
 19 adversary proceedings (if any), effective as of the end of March, 2014. This Motion is
 20 supported by the following Memorandum of Points and Authorities.

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **Background**

23 USA Commercial Mortgage Company (“USACM” or “Debtor”) and its related
 24 entities: USA Capital Realty Advisors, LLC; USA Capital Diversified Trust Deed Fund,
 25 LLC; USA Capital First Trust Deed Fund, LLC, and USA Securities, LLC, filed voluntary
 26 petitions in the United States Bankruptcy Court for the District of Nevada pursuant to
 27 Chapter 11 of the United States Bankruptcy Code on April 13, 2006. The bankruptcy
 28

1 cases were jointly administered in Case No. 06-10725 LBR. USACM continued to operate
 2 its business as debtor -in-possession pursuant to sections 1107(a) and 1108 of the
 3 Bankruptcy Code.

4 On January 8, 2007, this Court entered its Order Confirming the Third Amended
 5 Joint Chapter 11 Plan of Reorganization (the “Plan”).¹ The Plan established, as of the
 6 Effective Date, the USACM Trust, which incorporated the Estate Administration and Trust
 7 Agreement and Declaration of Trust (the “Trust Agreement”) by reference.² The Effective
 8 Date of the Plan was March 12, 2007.³ Geoffrey L. Berman was appointed as Liquidating
 9 Trustee of the Trust (the “Trustee”).⁴ In connection with that appointment, the Trustee
 10 posted and continuously maintained a bond with a current penal sum of \$5 million.

11 All of the payments to creditors required under the confirmed Plan to date have
 12 been completed. Any future payments will be paid, when due, pursuant to the Plan. The
 13 Trust has paid all secured, priority and administrative claims. Three interim distributions
 14 have been made to unsecured creditors. The Trust’s initial interim distribution to allowed
 15 beneficiaries was granted by this court, and the Trust released the interim distribution in
 16 November 2009. That distribution equaled 4.92% of the allowed creditor claims. The
 17 Trust sought authority for the second interim distribution, to distribute pro rata \$8 million
 18 (which equaled about 3.88% of creditor claims), in two installments. The first was to
 19 creditors holding allowed claims of \$1 million or more and was approved by the court by
 20 its December 2011 order.⁵ The Trust filed a motion to approve the balance of the second
 21 interim distribution, which was approved by the Court on March 1, 2012. Checks for this
 22 second installment of the second interim distribution were mailed to creditors during the

23
 24 ¹ Order Confirming the “Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization” as
 25 Modified Herein [DE 2376].

26 ² See Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization, §§ I(C), IV(D)(1), VII
 27 [DE 1799].

28 ³ See Notice of Effective Date of Confirmed Plan, p. 1 [DE 3083].

⁴ *Id.*, p. 5, Section 1.8.

⁵ The Court approved the second interim distribution to those creditors with claims in excess of
 \$1,000,000 on December 19, 2011. That distribution was released to those creditors on January
 11, 2012.

1 week of April 9, 2012 or as disputed claims were resolved and allowed. The Trust filed a
2 motion to authorize a third interim distribution to distribute pro rata \$2 million, which was
3 approved by the Court by its January 2, 2013 order.⁶ That distribution equaled .985% of
4 the allowed creditor claims.

5 There were nearly \$1 billion in claims made against the USACM Trust. As the
6 Court will recall, the direct lender proofs of claim typically involved those lenders'
7 interests in numerous loans and the Trust has resolved these claims on a loan-by-loan basis
8 rather than on an investor-by-investor basis. The Trust has finally resolved all claims.

9 The Trust has a current cash balance of about \$2,025,883.70. All post-confirmation
10 quarterly reports have been, or will be, timely filed and all post-confirmation quarterly fees
11 have been paid, or will be paid prior to the time set for filing objections to this Motion, to
12 the United States Trustee. The Trustee is current on post-confirmation payments to the
13 office of the United States Trustee.

14 The remaining liquidation activities of the Trust can be accomplished by the Trustee
15 with the advice of the Trust Oversight Committee.

The Law

17 || 11 U.S.C. § 350 provides, in pertinent part:

18 (a) After an estate is fully administered and the court has discharged the trustee, the
19 court shall close the case.

20 (b) A case may be reopened in the court in which such case was closed to
administer assets, to accord relief to the debtor, or for other cause

Rule 3022, Federal Rules of Bankruptcy Procedure, provides:

23 After an estate is fully administered in the Chapter 11 reorganization case, the
24 court, on its own motion or on motion of a party in interest, shall enter a final
decree closing the case.

25 (2) 'substantial consummation' means—

²⁷
28 ⁶ Order Approving USACM Liquidating Trust's Motion to Authorize Third Interim Distribution to Unsecured Creditors [DE 9868]. That distribution was released on January 13, 2013.

1 (A) Transfer of all or substantially all of the property proposed by the plan
2 to be transferred

3 (B) Assumption by the debtor or by the successor to the debtor under the
4 plan of the business or of the management of all or substantially all of the
5 property dealt with by the plan; and

6 (C) commencement of distribution under the plan.

7 **Discussion**

8 Pursuant to the Bankruptcy Code and Rules, it is appropriate for this Court to
9 determine that the estate has been substantially consummated and that the above-captioned
10 case should be closed, effective March 31, 2014, with the Bankruptcy Court retaining
11 jurisdiction as is allowed under title 28 of the United States Code, the Bankruptcy Code or
12 other applicable laws to enforce the provision, purposes, and intent of the Plan.

13 **Books and Records**

14 The Trustee seeks authority to abandon Debtor's remaining books and records,
15 other than tax returns subject to completion of the "Remaining Tasks" noted below.

16 **Exoneration of Bond**

17 The Trustee seeks exoneration of the Trustee's bond.

18 **Remaining Tasks**

19 The Trust must liquidate its remaining assets, principally its claims in excess of \$1
20 million in Placer Vineyards, three term life insurance policies on Tom Hantges' life, and
21 several judgments. After payment of expenses of administration of the Trust, net proceeds
22 will be distributed to the creditors who are the beneficiaries of the Trust. Upon a final
23 distribution to creditors, the Trustee will need to prepare and file final tax returns.

24 Pursuant to the Bankruptcy Code and Rules, it is appropriate for this Court to
25 determine that the estate has been fully administered, consummated, and that the case
26 should be closed.

Conclusion

For all of the foregoing reasons, the USACM Liquidating Trust respectfully requests that this Court enter an order:

- Authorizing the USACM Liquidating Trust to abandon the Debtor's remaining books and records other than tax returns;
- Closing the above-captioned case effective as of March 31, 2014;
- Exonerating the Trustee's bond; and
- Permitting a re-opening of the case pursuant to 11 U.S.C. § 350(b) should additional relief be required.

Dated: December 30, 2013.

LEWIS ROCA ROTHGERBER LLP

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